

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

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IN RE: SMITH & NEPHEW  
BIRMINGHAM HIP RESURFACING  
(BHR) HIP IMPLANT PRODUCTS  
LIABILITY LITIGATION

MDL-17-md-2775  
Hon. Catherine C. Blake

This Document Relates to  
Case No. 1:19-cv-589

**SHORT FORM COMPLAINT**

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**SHORT FORM COMPLAINT**

1. Plaintiff, Alfredo A. Rojas, states and brings this civil action in MDL No. 2775, entitled *In re: Smith & Nephew Birmingham Hip Resurfacing (BHR) Hip Implant Products Liability Litigation*. Plaintiff is filing this Short Form Complaint pursuant to CMO No. 3, entered August 3, 2017, by this Court.

**PARTIES, JURISDICTION AND VENUE**

2. Plaintiff is a resident and citizen of Austin, Travis County, Texas and claims damages as set forth below.

3. Plaintiff's spouse, not applicable, is a resident and citizen of not applicable and claims loss of consortium damages as set forth below.

4. Federal jurisdiction is proper based on diversity of citizenship.

5. The Federal District in which Plaintiff's initial implant took place: Texas Western District Court.

6. The Federal District in which Plaintiff's revision surgery(ies) took place: not applicable.

7. Plaintiff brings this action:

[ X ] on behalf of himself;

~~[ ] in a representative capacity as the Representative of the Estate of Full Name of Decedent, having been duly appointed as the Personal Representative / Administrator by the Title/Name of Court of County, State. A copy of the Letters of Administration for a wrongful death claim is annexed hereto if such letters are required for the commencement of such a claim by the Probate, Surrogate, or other appropriate court of the jurisdiction of the decedent. [Cross out if not applicable.]~~

### **FACTUAL ALLEGATIONS**

8. On or about December 13, 2010, Plaintiff underwent surgery during which the Smith & Nephew BHR Resurfacing System was implanted into Plaintiff's RIGHT hip.

9. Plaintiff's RIGHT BHR implant surgery was performed at Seton Medical Center Austin, Texas by Dr. William R. Schultz.

~~10. Plaintiff underwent medically indicated revision of the LEFT/RIGHT BHR hip implant on or about \_\_\_\_\_. [Or: Plaintiff's medical provider(s) have recommended revision but Plaintiff has not been medically cleared to undergo revision surgery: \_\_\_\_\_ (checkbox)]~~

~~11. Plaintiff's revision surgery was performed by \_\_\_\_\_ at \_\_\_\_\_.~~

~~12. Plaintiff suffered the following complications, injuries, and/or indications, some or all of which made revision surgery medically necessary: \_\_\_\_\_.~~

~~13. [IF BILATERAL]: Plaintiff's LEFT/RIGHT BHR implant surgery was performed at \_\_\_\_\_ by \_\_\_\_\_.~~

14. ~~[IF BILATERAL]: On or about \_\_\_\_\_, Plaintiff underwent surgery during which the Smith & Nephew BHR Resurfacing System was implanted into Plaintiff's LEFT/RIGHT hip.~~

15. ~~[IF BILATERAL]: Plaintiff underwent medically indicated revision of the LEFT/RIGHT BHR hip implant on or about \_\_\_\_\_. [Or: Plaintiff's medical provider(s) have recommended revision but Plaintiff has not been medically cleared to undergo revision surgery: \_\_\_\_\_ (checkbox)]~~

16. ~~[IF BILATERAL]: Plaintiff's revision surgery was performed by \_\_\_\_\_ at \_\_\_\_\_.~~

17. Plaintiff adopts the allegations of the Master Amended Consolidated Complaint ("MACC") filed August 11, 2017, and all amendments to the MACC.

18. Notwithstanding the foregoing, Plaintiff does not adopt the following paragraphs of the MACC: not applicable.

19. Notwithstanding the foregoing, Plaintiff additionally alleges that: not applicable.

**ALLEGATIONS AS TO INJURIES**

20. Plaintiff claims damages as a result of (check all that are applicable):

☒ INJURY TO HIMSELF

☐ INJURY TO THE PERSON REPRESENTED

☐ WRONGFUL DEATH

☐ SURVIVORSHIP ACTION

☒ ECONOMIC LOSS

~~(b) Plaintiff's spouse claims damages as a result of (check all that are applicable):~~

*[Cross out if not applicable.]*

☐ ~~LOSS OF SERVICES~~

☐ ~~LOSS OF CONSORTIUM~~

21. Defendant, by its actions or inactions, proximately caused the injuries to Plaintiff.

**DEFENDANT-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY**

22. The following claims and allegations are asserted by Plaintiff and are herein adopted by reference (check all that are applicable):

☒ COUNT I (strict products liability: Texas)

☒ COUNT II (negligence: Texas)

☒ COUNT III (strict products liability failure to warn: Texas)

☒ COUNT IV (negligent failure to warn: Texas)

☒ COUNT V (negligent misrepresentation: Texas)

☒ COUNT VI (negligence per se: Texas)

☒ COUNT VII (breach of express warranties: Texas)

☒ COUNT VIII (manufacturing defect: Texas)

☒ COUNT IX (punitive damages: Texas)

In addition to the above, Plaintiff asserts the following additional causes of action under applicable state law:

☒ COUNT X (breach of implied warranties: Texas)

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- a. For compensatory damages;
- b. Pre-judgment and post-judgment interest;
- c. Statutory damages and relief of the state whose laws will govern this action;

- d. Costs and expenses of this litigation;
- e. Reasonable attorneys' fees and costs as provided by law;
- f. Equitable relief in the nature of disgorgement; and
- g. All other relief as the Court deems necessary, just and proper.

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a trial by jury as to all claims in Complaint so triable.

Dated: February 25, 2019

Respectfully submitted,

/s/ Ethan L. Shaw

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